

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICHARD RUDOLPH, DAN GRIFFIN,
CHRIS WELLS, and CAROLYN ALLEN, and
others,

Case Nos. 05-70916; 04-74003

Plaintiffs,

Honorable John Corbett O'Meara

v.

GUARDIAN PROTECTIVE SERVICES,
INC., GUARDIAN SECURITY SERVICES,
INC., a/k/a GUARDIAN BONDED
SECURITY,

Defendant.

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ORDER OF PARTIAL REMAND

This matter came before the court on Defendant's January 20, 2006 motion to dismiss. Plaintiffs filed a response March 13, 2006; and Defendant filed a reply March 23, 2006. Oral argument was heard May 16, 2006.

Plaintiffs filed a seven-count complaint in this court October 13, 2004, alleging that Defendant had failed to pay Plaintiffs in accordance with the Detroit Living Wage Ordinance, Detroit City Code § 18-5-81 ("DLWO"). The case was assigned to this court as Case No. 04-74003.

On November 17, 2004, this court ordered the dismissal of Counts I and II of the complaint, as they sought relief for violations of state law. Plaintiffs then voluntarily dismissed their claim brought under the Fair Labor Standards Act ("FLSA") and re-filed their case in the Circuit Court for the County of Wayne. Prior to dismissing the federal claim, however, Plaintiffs and Defendant stipulated to an order to amend the complaint to add the City of Detroit as a party defendant.

Plaintiffs' claims against the City are still pending in this court, along with cross-claims filed by the City against Guardian and by Guardian against the City.

Plaintiffs filed the instant action in state court on February 16, 2005; and Defendant filed timely notice of removal to federal court. The case, Case No. 05-70716, was assigned to Judge Victoria Roberts and subsequently re-assigned to this court as a companion case to the 2004 case. The cases were consolidated April 17, 2006. Count II of the initially filed complaint is identical to Count I of the subsequent complaint, Count III is identical to Count II, and Count IV is identical to Count III, the FLSA claim.

The gravamen of Plaintiffs' complaint is that they were not paid in accordance with the DLWO, and Defendant contends that the ordinance is impermissibly vague. The language of the DLWO mandates that disputes arising under the ordinance are to be heard in Wayne County Circuit Court. Although this court has the power to hear the dispute, it is clear that state issues predominate in this matter; therefore, the better course of action is to remand Counts I and II to the Circuit Court for the County of Wayne. Count III, the FLSA claim, will be dismissed without prejudice; and Plaintiffs may choose to re-file that claim in this court, depending upon the outcome of the case in state court.

ORDER

It is hereby **ORDERED** that Counts I and II of Case No. 05-70916 are **REMANDED** to the Circuit Court for the County of Wayne.

It is further **ORDERED** that Count III of Case No. 05-70916 is **DISMISSED WITHOUT PREJUDICE**.

It is further **ORDERED** that Defendant's January 20, 2006 motion to dismiss is **DENIED AS MOOT**.

s/John Corbett O'Meara
John Corbett O'Meara
United States District Judge

Dated: June 6, 2006